



**THE SOCIALIST REPUBLIC OF VIET NAM**  
**PERMANENT MISSION TO THE UNITED NATIONS**

**STATEMENT**

**By the Delegation of Viet Nam**

**at the Sixth Committee of the 78<sup>th</sup> Session of the General Assembly**  
***Agenda item 79 “Report of the International Law Commission on the work of its  
seventy-third and seventy-fourth sessions”***

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*Mr. Chair,*

My delegation would like to thank the International Law Commission for the comprehensive report on the work of its seventy-fourth session. Viet Nam appreciates the contribution of the Commission in promoting universal respect for international law, including through the codification and progressive development of international law.

In the first cluster, our delegation would like to deliver observations on Chapter III, IV and VIII of the Report.

*Mr. Chair,*

1. With your kind permission, I would like to address the topic of “Immunity of State officials from foreign criminal jurisdiction”. First and foremost, our delegation would like to extend our appreciation to the Commission for the completion of the first reading of the draft articles as well as look forward to the continuation of this topic. We would like to thank the Commission for inviting States to submit comments, observations and practices on this topic and would like to make the following observations.

The exercise of criminal jurisdiction and the principle of territoriality are matters of domestic law, while the principles of sovereign equality, non-intervention in the domestic affairs of States belong to international law principles. Therefore, in our view, criminal jurisdiction over foreign officials should only be exercised after resorting to consultation and exchange with the concerned

government, through diplomatic or other official channel, with due regard to related rules of international law. Perhaps for this reason, Viet Nam experiences few practices in the exercise of criminal jurisdiction on foreign state officials.

*Mr. Chair,*

2. Turning to the topic of “General principles of law”, at the outset, I wish to commend the Commission for its dedicated efforts, with the valuable support of the Special Rapporteur, Mr. Marcelo Vasquez, that led to the adoption on 11 draft conclusions on the first reading, within a relatively short period of time since this topic was included in the program of work of the Commission in 2018. In our view, the set of 11 draft conclusions and commentaries thereof would provide a broader perspective of the topic and allow States to come up with more relevant comments and observations.

My delegations would begin with comments on certain individual draft conclusions and later, examine the set of draft conclusion by applying it to a particular example.

Viet Nam welcomes draft Conclusion 2, in which the term “community of nations” is being used as a substitute for the term “civilized nations” found in Article 38, paragraph 1 (c). We support the Commission’s assertion in the commentary of draft Conclusion 2 that all nations participate equally, without any kind of distinction, in the formation of general principles of law, in accordance with the principle of sovereign equality set out in Article 2, paragraph 1, of the Charter of the United Nations. On draft conclusion 3, my delegation observes that there are practices in favor of this conclusion, namely general principles of law may be formed within the international legal system. Indeed, the term “universally recognized principles of law”, frequently used in ASEAN instruments, in its context seemingly refers to principles governing international relations. My delegation takes note of draft Conclusion 10 paragraph 2 b, which states that general principles of law may serve as basis for primary rights and obligations, as well as a basis for secondary and procedural rules.

Now we would like to examine the set of draft article by applying it to a particular principle in an attempt to determine if a particular norm could be considered as part of general principles of law as an independent source of

international law. For this purpose, we choose the principle of interpretation common to many legal systems, which is “when interpreting agreements, in addition to the text of the agreement, the intentions of the parties in concluding that agreement are also important”.

The application of the draft conclusions consists of three steps. Firstly, Conclusion 4 (a) and 5 require in order to be considered a general principle of law, the principle must be “common to the various legal systems of the world”. The principle of taking intentions of the parties into account when interpreting agreements meets this criteria. Secondly, this principle of interpretation of agreements is transposable to the international legal system - a system based on agreements of States. Thirdly, since “recognition can be implicit when the compatibility test is fulfilled”, this principle also meets the requirement of draft Conclusion 6 that the community of nations has recognized that a principle is transposed in the international legal system.

However, the truth is that the principle of taking into account intentions of parties in the interpretation of agreements was not supported by the drafters of Article 31 of the Vienna Convention on the Law of Treaties 1969. As you know, the Vienna Convention on the Law of Treaties favors the text as authentic means of interpretation and prescribes specific steps for interpretation of treaties.

Thus, in this example, the application of the draft conclusions leads to unsatisfactory result as it creates more uncertainty and conflict rather than reduce them. Draft Conclusion 11 which rejects hierarchy between general principles of law and other sources of international law and suggests the application of the generally accepted techniques of interpretation and conflict resolution in international law does not seem to help solving the problem.

In light of the above, my delegation suggests the Commission to revisit the set of draft conclusions, particularly draft Conclusion 6 and draft Conclusion 11. Higher threshold for transposition of a principle formed in domestic legal system to general principle of law as a source of international law may be necessary. Transposition should be made through the explicit consent of the community of nations. In case of conflict between a principle formed in the domestic legal system

and a treaty based principle, the transposition must be considered as not being recognized and the treaty based principle must prevail.

*Mr. Chair,*

3. On the topic “Sea-level rise in relation to international law”, allow me to offer some brief general observations. We welcome the Additional Paper to the First Issues Paper prepared by the Co-Chairs of the Study Group, which was a focal point of discussion during the 74th Session of the ILC. As a country specially affected by sea-level rise, Viet Nam places utmost importance on the examination from the legal perspective of sea level rise and its consequences on sustainable development of States, or even the whole territory in the case of small islands States, as well as the broader stability and security of international relations.

First of all, we wish to reaffirm the paramount significance of the United Nations Convention on the Law of the Sea (UNCLOS) in addressing maritime concerns, including those stemming from sea-level rise. We stress the necessity of legal stability and we concur that this concept is enshrined within the UNCLOS. Consequently, maritime boundaries established in accordance with UNCLOS, should remain unchanged despite the effects of sea-level rise.

Secondly, Viet Nam places significant importance on the principles of sovereignty over natural resources and equity in the examination and resolution of the legal consequences of sea-level rise. These principles are closely linked with the principle of common but differentiated responsibilities in addressing climate change.

Thirdly, regarding the future direction of the Study Group, we note that the Co-Chairs are considering various options, such as draft conclusions, an interpretative declaration, or a draft framework convention. In the light of recent requests for advisory opinions addressed first to the International Tribunal for the Law of the Sea and then to the International Court of Justice, we are of the view that the Study Group should exercise caution in considering issues addressed by other bodies.

*I thank you./.*